

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

EDWARD MANZKE,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
CENTERS FOR DISEASE CONTROL AND)	
PREVENTION,)	
)	
Defendant.)	

COMPLAINT

Plaintiff, EDWARD MANZKE, by and through his counsel, THE COLLINS LAW FIRM, P.C., states for his complaint against Defendant, CENTERS FOR DISEASE CONTROL AND PREVENTION, as follows:

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701 *et seq.*, for injunctive and other appropriate relief, which seeks the processing and release of agency records requested by Plaintiff, Edward Manzke, from Defendant, Centers for Disease Control and Prevention ("CDC").

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(E)(iii). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701-706. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

3. Plaintiff, Edward Manzke, is an Attorney and Partner with The Collins Law Firm, P.C., and is a resident of Naperville, Illinois. Plaintiff is an attorney representing Tim McGray and Amanda Carlin in a Wrongful Death, Survival, Family Expense, and Res Ipsa Loquitor action pending in the United States District Court, Northern District of Illinois, Eastern Division, captioned as follows: *Tim McGray, individually and as Special Administrator of the Estate of Connor McGray, deceased, and Amanda Carlin, individually, v. Bristol-Myers Squibb Company, and Mead Johnson & Company*, Case No. 09 CV 2058.

4. Defendant CDC is an operating component of the United States Department of Health and Human Services and provides oversight to various federal agencies related to public health and wellness. Defendant is obliged to comply with FOIA pursuant to 5 U.S.C. § 552(a), Defendant's own regulations promulgated thereunder, 45 C.F.R. § 5.24, *et seq.* and 5 U.S.C. §§ 701-706.

Factual Allegations

5. On March 28, 2011, Plaintiff sent a FOIA request letter to Defendant requesting: “(1) a photocopy of the PFGE pattern relating to your lab files: 2005-32-01 MN, 2007-05-01 SC, 2008-09-01 IL, 2008-09-01/#1 IL, 2008-09-02/02 IL, 2008-09-02/01 IL; (2) the .tif files for your lab files: 2005-32-01 MN, 2007-05-01 SC, 2008-09-01 IL, 2008-09-01/#1 IL, 2008-09-02/02 IL, 2008-09-02/01 IL; (3) if the patterns were not on .tif then the .pdf files for your files: 2005-32-01 MN, 2007-05-01 SC, 2008-09-01 IL, 2008-09-01/#1 IL, 2008-09-02/02 IL, 2008-09-02/01 IL; (4) the dendrogram that shows the comparison of these strains of *Enterobacter Sakazakii*.” A true and correct copy of Plaintiff's March 28, 2011 FOIA request is attached hereto as Exhibit A and incorporated herein by reference.

6. On April 4, 2011, Defendant sent Plaintiff a response letter stating: “Your request has been received by the Center for Disease Control and Prevention (CDC)/Agency for Toxic Substances and Disease Registry (ATSDR) and will be sent to the area(s) which may have pertinent records.” The CDC assigned the claim request number 11-00574-FOIA. A true and correct copy of Defendant’s April 4, 2011 correspondence is attached hereto as Exhibit B and incorporated herein by reference.

7. A governmental agency, such as Defendant, is required to make a determination on a FOIA request within **20 working days of receipt**. 5 U.S.C. § 552(a)(6)(A)(i) (emphasis added).

8. Over 20 business days have passed since Plaintiff’s Request, and Defendant has neither released the information nor provided any basis for withholding it.

9. As of the date of this Complaint, Defendant has failed to make a determination on Plaintiff’s FOIA Request, or to produce the documents requested by Plaintiff.

10. Defendant’s failure to produce the requested information may have an adverse impact on the prosecution of Case No. 09 CV 2058.

11. Defendant has neither requested an extension under 5 U.S.C. § 552(a)(6)(B) nor issued a decision for Plaintiff to appeal under 5 U.S.C. § 552(a)(6)(A)(ii); therefore, Plaintiff has exhausted his administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C).

Count I
(Violation of the Freedom of Information Act)

12. Plaintiff, Edward Manzke, repeats, realleges and incorporates by reference the allegations set forth in paragraphs 1 through 11 as paragraph 12 of Count I as though fully set forth herein.

13. Defendant's failure to make a reasonable effort to search for records sought by the Request violates FOIA, 5 U.S.C. § 552(a)(3), and Defendant's own regulations promulgated thereunder, 45 C.F.R. § 5.24, *et seq.*

14. Defendant's failure to promptly make available the record sought by the Request violates FOIA, 5 U.S.C. § 552(a)(3), and Defendant's own regulations promulgated thereunder, 45 C.F.R. § 5.24, *et seq.*

Count II
(Violation of the Administrative Procedure Act)

15. Plaintiff, Edward Manzke, repeats, realleges and incorporates by reference the allegations set forth in paragraphs 1 through 14 as paragraph 15 of Count II as though fully set forth herein.

16. Defendant's failure to disclose documents responsive to Plaintiff's request constitutes agency action unlawfully withheld and unreasonably delayed, in violation of the APA, 5 U.S.C. §§ 701-706. Defendant's failure in this matter is arbitrary, capricious, an abuse of discretion, not in accordance with the laws and without observance of procedure required by law, all in violation of the APA.

Count III
(Claim for Attorney Fees)

17. Plaintiff, Edward Manzke, repeats, realleges, and incorporates by reference the allegations set forth in paragraph 1 through 16 as paragraph 17 of Count III as though fully set forth herein.

18. Defendant's failure to disclose the requested documents has unduly forced Plaintiff to incur attorney fees and costs in association with this Complaint;

19. Plaintiff is entitled to an award of attorney fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E), as they should “substantially prevail” in a determination of whether Defendant violated FOIA and the APA.

Requested Relief

WHEREFORE, Plaintiff respectfully request and pray that this Court:

- a. Enter an Order declaring that Defendant has wrongfully withheld requested agency records and has acted in violation of FOIA and the APA;
- b. Issue a permanent injunction directing Defendant to release and/or disclose to Plaintiff all documents and information responsive to Plaintiff’s requests;
- c. Issue a permanent injunction directing Defendant to release and/or disclose to Plaintiff the documents requested in FOIA request 11-00574;
- d. Maintain jurisdiction over this action until Defendant complies with FOIA, APA, and every Order of this Court;
- e. Award Plaintiff his attorney fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E); and
- f. Grant such other relief as the Court may deem just and proper.

Dated: July 11, 2011

Respectfully submitted,

By: /s/ Aaron W. Rapier
One of his Attorneys

Aaron W. Rapier
THE COLLINS LAW FIRM, P.C.
1770 Park Street, Suite 200
Naperville, IL 60563
(630) 527-1595 Ext. 242

EXHIBIT A



THE COLLINS
EDWARD J. MANZKE

JULIE ANDERSON-KULOVITS
REBECCA S. CARLSON
ROBERT L. DAWIDIUK
MEGAN A. DRECHINSKI
EMILY K. ERGANG
DANIEL C. FABBRI
AARON W. RAPIER

Of Counsel
JOHN A. SOPUCH III

March 28, 2011

VIA U.S. MAIL

Ms. Katherine Norris
CDC/ATSDR FOIA Officer
Office of the Chief Information Offices
1600 Clifton Rd., N.E.
Atlanta, Georgia 30333

**Re: Freedom of Information Act Request for PFGE Patterns or .tif Files
For Enterobacter Sakazakii Infections**

Dear Ms. Norris:

Pursuant to the Freedom of Information Act, I am requesting:

(1) a photocopy of the PFGE pattern relating to your lab files:

2005-32-01 MN

2007-05-01 SC

2008-09-01 IL

2008-09-01/#1 IL

2008-09-02/02 IL

2008-09-02/01 IL

(2) the .tif files for your lab files:

2005-32-01 MN

2007-05-01 SC

2008-09-01 IL

2008-09-01/#1 IL

2008-09-02/02 IL

2008-09-02/01 IL

(3) if the patterns are not in .tif, then the .pdf files for your lab files:

2005-32-01 MN

2007-05-01 SC

2008-09-01 IL

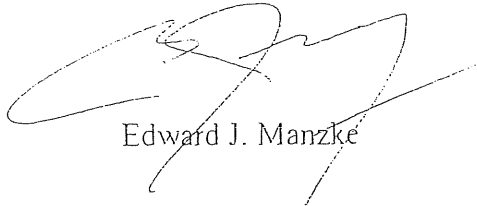
2008-09-01/#1 IL

2008-09-02/02 IL

2008-09-02/01 IL

(4) the dendogram that shows the comparison of these strains of Enterobacter Sakazakii.

Sincerely,

A handwritten signature in black ink, appearing to be 'EJ Manzke', written over a horizontal line.

Edward J. Manzke

EJM:jdv

EXHIBIT B



Centers for Disease Control
and Prevention (CDC)
Atlanta GA 30333

April 4, 2011

Edward Manzke
The Collins Law Firm
1770 Park Street
Suite 200
Naperville, IL 60563

Dear Mr. Manzke:

This letter is in response to your Freedom of Information Act (FOIA) request of March 28, 2011.

Your request has been received by the Centers for Disease Control and Prevention (CDC)/Agency for Toxic Substances and Disease Registry (ATSDR) and will be sent to the area(s) which may have pertinent records. Program officials will initiate a search, and we will provide a copy of all releasable agency records as quickly as possible. The cut-off date for your request will be the date the search for responsive records is initiated by program staff. All requests are handled on a first-in, first-out basis.

Your request has been assigned #11-00574-FOIA. You may check on the status of your case by going to our FOIA webpage at <http://www2a.cdc.gov/od/foiastatus> and entering this number. The fiscal year is the first two numbers and the request ID is the second set of numbers.

There may be a charge for processing your request.

Sincerely,

Freedom of Information Act Office
Office of the Chief Information Officer
(404) 498-1580
Fax: (404) 498-1575

Re: Enterobacter sakazakii infections